IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

TIFFANY K. JOHNSTON,	)	
	)	
Plaintiff	)	
	)	
v.	)	Cause No.
	)	
AMERICAN FAMILY MUTUAL	)	
INSURANCE COMPANY,	)	
	)	Circuit Court Cause Number:
Defendant.	)	16PH-CV01814

DEFENDANT'S ANSWER TO PLAINTIFF'S COMPLAINT

COMES NOW Defendant, American Family Mutual Insurance Company, and in answer to Plaintiff Tiffany K. Johnston's Petition, states as follows:

1. Defendant has insufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 1, and therefore, holds Plaintiff to strict proof thereof.

2. Defendant admits Paragraph 2.

3. Defendant admits Paragraph 3.

4. Defendant has insufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 4, and therefore, holds Plaintiff to strict proof thereof.

5. Defendant has insufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 5, and therefore, holds Plaintiff to strict proof thereof.

6. Defendant has insufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 6, including each of its subparts (a) through (g), and therefore, holds Plaintiff to strict proof thereof.

7. Defendant has insufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 7, and therefore, holds Plaintiff to strict proof thereof.

8. Defendant has insufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 8, and therefore, holds Plaintiff to strict proof thereof.

9. Defendant has insufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 9, and therefore, holds Plaintiff to strict proof thereof.

10. Defendant has insufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 10, and therefore, holds Plaintiff to strict proof thereof.

11. Defendant has insufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 11, and therefore, holds Plaintiff to strict proof thereof.

12. Defendant admits Paragraph 12.

13. Defendant admits that the Policies provide certain coverages, including uninsured motorist coverage, subject to the terms, conditions, and exclusions contained therein and further states that the Policy speaks for itself. Defendant specifically denies that the Policies stack to provide $200,000 in coverage.

14. Defendant has insufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 14, and therefore, holds Plaintiff to strict proof thereof.

15. Defendant denies each and every allegation contained in Paragraph 15.

16. Defendant admits Paragraph 16.

17. Defendant admits Paragraph 17.

18. Defendant denies Paragraph 18.

19. Defendant admits that Plaintiff has demanded payment from Defendant for the amount claimed by Plaintiff to be due under the uninsured motorist coverage of the Policies. Defendant denies any remaining allegations not specifically admitted.

20. Defendant admits that Defendant refused to pay Plaintiff the amount demanded by Plaintiff. Defendant denies any remaining allegations not specifically admitted.

DEFENDANT'S AFFIRMATIVE DEFENSES
FIRST AFFIRMATIVE DEFENSE

For further answer and as an affirmative defense, Defendant states that Plaintiff's Petition should be dismissed for failure to state a claim upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

For further answer and as an affirmative defense, Defendant states that Plaintiff's alleged injuries and damages are a direct result of Plaintiff's own negligence and comparative fault in one or more of the following respects:

a. Plaintiff failed to keep a careful lookout.

b. Plaintiff knew or by the use of the highest degree of care could have known that there was a reasonable likelihood of collision in time thereafter to have stopped or swerved, or slackened speed, or sounded a warning or some combination of the foregoing but Plaintiff failed to do so.

c. Plaintiff failed to yield the right-of-way.

d. Plaintiff failed to signal an intention to change lanes.

e. Plaintiff changed lanes when it was not reasonably safe to do so in violation of 304.019 R.S.Mo.

f. Plaintiff improperly passed the other vehicle.

g. Plaintiff drove at an excessive speed.

h. Plaintiff failed to mitigate damages.

And, as a matter of law, any verdict Plaintiff obtains should be reduced by a percentage equal to said negligence and comparative fault.

THIRD AFFIRMATIVE DEFENSE

For further answer and as an affirmative defense, Defendant states that Plaintiff's Petition should be dismissed for failure to comply with all conditions precedent to the insurance policy at issue including, but not limited to, the failure to make the owner or operator of the uninsured motor vehicle a defendant in this suit.

FOURTH AFFIRMATIVE DEFENSE

For further answer and as an affirmative defense, Defendant states that the following Policy provisions located in in the Policies UNINSURED MOTORIST COVERAGE – MISSOURI Endorsement, apply to Plaintiff's claim, providing:

D. EXCLUSIONS

1. **We** do not provide coverage for **bodily injury** sustained by any **insured person**:

a. while **occupying**, or when struck by, a motor vehicle that is not insured for this coverage under this policy if it is owned by **you** or any resident of **your** household.

***

If any uninsured motorist insurance law of financial responsibility law determines that any exclusion is unenforceable, **we** will provide only the minimum limits required by that law. If any other insurance provides coverage up to the minimum limits required, the provisions of this coverage remain unchanged.

And, pursuant to this Exclusion, the uninsured motorist coverage provided by policy number 1961-2552-02-71-FPPA-MO is limited to the minimum required by the Missouri Motor Vehicle Financial Responsibility law ($25,000.00).

FIFTH AFFIRMATIVE DEFENSE

For further answer and as an affirmative defense, pursuant to 490.715, RSMo., there is a presumption that the dollar amount necessary to satisfy the financial obligation to Plaintiff's healthcare provider(s) represents the value of the medical treatment rendered.

SIXTH AFFIRMATIVE DEFENSE

For further answer and as an affirmative defense, Defendant expressly reserves its right to deny coverage under any other term, condition or exclusion of the policy shown to be applicable as the result of further investigation and/or pre-trial discovery. Defendant's failure to assert any of those other defenses in this Answer at this time is without prejudice of its rights to assert them later and shall not be deemed to constitute a waiver or estoppel of its rights to raise additional affirmative defenses as may be warranted.

WHEREFORE, Defendant American Family Mutual Insurance Company prays that Plaintiff's Petition be dismissed at Plaintiff's cost and for such other relief as the Court deems just and proper.

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CERTIFICATE OF SERVICE

I hereby certify that on January 10, 2017, this document was electronically filed through the Missouri e-file system which will provide copies of same to all attorneys of record. Pursuant to Rule 55.03(a), the undersigned further certifies that he signed an original of this pleading and that an original of this pleading shall be maintained for a period not less than the maximum allowable time to complete the appellate process.